

# Building Blocks for Effective Housing Elements

## Governmental Constraints

### Constraints-Housing for Persons with Disabilities

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*Government Code Section 65583(a)(4) requires: “an analysis of potential and actual government constraints upon the maintenance, improvement or development of housing... **for persons with disabilities as identified in the analysis pursuant to paragraph (4) of subdivision (a)**, including land use controls, building codes and their enforcement, site improvements, fees and other exactions required of developers, and local processing and permit procedures. The analysis shall also demonstrate local efforts to remove governmental constraints that hinder the locality from meeting ... the need for housing for persons with disabilities (see Screen 7).*

*Government Code Section 65583(c)(3) requires the housing element provide a program to “address and where appropriate and legally possible, remove governmental constraints to the maintenance, improvement, and development of housing for persons with disabilities. The program shall remove constraints to and provide reasonable accommodations for housing designed for, intended for occupancy by, or with supportive services for, persons with disabilities.”*

#### I. REQUISITE ANALYSIS

Housing element law requires that in addition to the needs analysis for persons with disabilities, the housing element must analyze potential governmental constraints to the development, improvement and maintenance of housing for persons with disabilities, demonstrate local efforts to remove any such constraints and provide for reasonable accommodations for persons with disabilities through programs that remove constraints.

Ordinances, policies or practices enacted to protect the health and safety of citizens and further the general welfare must be periodically reexamined to determine whether they are accomplishing their intended purpose or in practice constitute a barrier to the maintenance, improvement or development of housing with the effect of excluding housing variety and availability for the disabled.

The analysis of potential and actual constraints upon the development, maintenance and improvement of housing for persons with disabilities must include, but need not be limited to:

Review Zoning and Land-Use Policies and Practices to Ensure:

- compliance with fair housing laws;
- provision for group homes over six specifically for the disabled, other than those residential zones covered by State law;
- a broadened definition of family that 1) provides zoning code occupancy standards specific to unrelated adults and, 2) complies with Fair Housing Law;
- siting or separation requirements for licensed residential care facilities, to determine extent to which the local restrictions effects the development and cost of housing;
- any minimum distance requirements in the land-use element for the siting of special needs housing developments in relationship to each other do not impact the development and cost of housing for persons with disabilities; and
- alternate residential parking requirements, including reduction, for persons with disabilities.

Evaluation of the Permit and Processing Procedures for:

- process to request accessibility retrofits;
- compliance with all State laws regulating a “by right” designation and/or permit requirement of licensed residential care facilities with fewer than six persons in single-family zones;
- conditions or use restrictions on licensed residential care facilities with greater than 6 persons or group homes that will be providing services on-site and the extent to which they effect the development or conversion of housing for persons with disabilities; and
- group home public comment period and the extent to which it differs from other types of residential development.

Review of Building Codes to identify:

- the year of the Uniform Building Code adoption;
- any amendments that might diminish the ability to accommodate persons with disabilities; and
- adopted universal design elements that address limited lifting or flexibility (i.e., roll-in showers and grab bars), limited mobility (i.e., push/pull lever faucets, wide swing hinges) and limited vision (i.e., additional stairwell and task lighting).

### Review for Reasonable Accommodation Procedure to:

- identify and analyze whether the locality has an established reasonable accommodation procedure;
- describe the process for requesting a reasonable accommodation retrofit (i.e. ramp request); and
- describe the extent to which existing requirements constrain or facilitate the application of an existing or proposed reasonable accommodation procedure (i.e., permit processing, zoning, building codes, accommodating procedures for the approval of licensed residential care facilities and Fair Housing Amendment Act (FHAA) physical accessibility efforts [i.e., ADA retrofit efforts or other measures that provide flexibility]).

### Review for Programs that:

- address the needs of persons with disabilities and the extent to which the local process for accommodation is different from that for other types of residential development;
- remove or mitigate identified constraints and address the housing needs of the disabled;
- ensure information is available on how to request a reasonable accommodation with respect to zoning, permit processing, or building laws; and
- assist in meeting identified needs. Contact local service providers of special needs groups to assist in the identification and analysis of constraints to the provision of housing for persons with disabilities, including lack of capacity and available resources and unmet needs.

## **KEY IDEAS**

### **II. HELPFUL HINTS**

- Heath and Safety Code Sections 1267.8, 1566.3, 1568.08 require local governments to treat licensed group homes and residential care facilities with six or fewer residents no differently than other by-right single-family housing uses. "Six or fewer persons" does not include the operator, the operator's family or persons employed as staff. Local agencies must allow these licensed residential care facilities in any area zoned for residential use, and may not require licensed residential care facilities for six or less to obtain conditional use permits or variances that are not required of other family dwellings.

- Entitlement jurisdictions should have conducted an analysis of impediments to fair housing for the purposes of receiving funds from Housing and Urban Development (HUD). This impediments analysis contains similar elements and may be a useful resource for the SB 520 constraints analysis.

### III. MODEL ANALYSES

#### [Sample Analysis](#)

### IV. LINKS

Department of [Housing and Community Development \(HCD\): Universal Design Model Ordinance](#)

Department of Housing and Community Development (HCD): Technical Assistance [Memo on Chapter 671, Statutes of 2001 \(SB 520- Chesbro\) - Persons with Disabilities](#)

Sample Reasonable Accommodation Ordinances:

- [Reasonable Accommodation Ordinance 3582 City of Santa Rosa](#)
- [Reasonable Accommodation Ordinance 7639 City of Long Beach](#)

Mental Health Advocacy Services, Inc. [\*"Fair Housing Reasonable Accommodation: A Guide to Assist Developers and Providers of Housing for People with Disabilities in California"\*](#)

Corporation for Supportive Housing, [Toolkit for Developing and Operating Supportive Housing/ Housing Operations](#)

Corporation for Supportive Housing, [HIV Services and Supportive Housing](#)

[AIDS Housing of Washington: Tools and Resources](#)

American Association of Retired Persons (AARP): [Universal Design Home Modification](#)

[Adaptive Environments Center, Inc. Universal Design](#)

[North Carolina State University](#), Center for Universal Design